IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr.Hamendra Kumar v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.3852/1995
under Article 226 of the Constitution of India.

Date of Order : 29th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. L.R.Upadhyay, Dy.Govt.Advocate.

BY THE COURT :

By this petition for writ a challenge is given by the petitioner to the order dated 17.11.1995 passed by the disciplinary authority imposing a penalty of removal from service upon the petitioner. The petitioner has also given challenge to the memorandum dated 27.8.1990 issued by the disciplinary authority under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) initiating disciplinary proceedings against him.

The factual matrix required to be noticed for adjudication of present writ petition are as follows:-

The petitioner entered in services of Government of Rajasthan being appointed as Civil Assistant Surgeon in the month of March, 1977. The petitioner availed privilege leave from 2.2.1982 to 27.2.1982. After expiry of leave period referred above the petitioner submitted an application for extension of leave upto 30.4.1982 and the same was sanctioned by Chief Medical and Health Officer, Ratangarh. According to the petitioner after 30.4.1982 he failed to attend duties for the reasons beyond his control and, therefore, he remained absent upto 15.4.1984, however, he submitted applications for extension of leave during the period above.

The petitioner reported on duties on 16.4.1984 and thereafter he was posted at Jaswantgarh as Civil Assistant Surgeon under an order dated 25.4.1984 passed by the Secretary to the Government of Rajasthan, Department of Medical and Health Services. The petitioner thereafter was served with a charge sheet dated 27.8.1990 proposing an inquiry under Rule 16 of the Rules of 1958 for the allegation of remaining unauthorisedly absent from duties from 1.5.1982 to 16.4.1984.

The petitioner submitted an explanation but the disciplinary authority being not satisfied with the same appointed inquiry officer to make an inquiry for the allegations levelled under the charge sheet dated 27.8.1990.

The disciplinary authority after receiving copy of inquiry report and other record of the inquiry by a notice dated 20.5.1992 instructed the petitioner to submit his comments upon the report of inquiry officer within a period of 15 days. The petitioner in pursuant thereof submitted an explanation on 2.6.1992 followed by an additional reply dated 14.11.1995. The petitioner also demanded an opportunity of personal hearing under the additional reply dated 14.11.1995.

The disciplinary authority by an order dated 17.11.1995 imposed a penalty of removal from service upon the petitioner. Being aggrieved by the same present writ petition is preferred by the petitioner under Articles 226 and 227 of the Constitution of India.

The contentions of the counsel for the petitioner to challenge the order impugned dated 17.11.1995 are that the entire inquiry was conducted in flagrant violation of provisions of Rule 16 of the Rules of 1958, the order passed by the disciplinary

authority dated 17.11.1995 is not a speaking and reasoned order and the penalty imposed upon the petitioner is a discriminatory and also shockingly disproportionate to the delinquency for which the petitioner is found guilty.

A reply to the writ petition has been filed on behalf of the respondents and the rejoinder to the same is also filed on behalf of the petitioner. The respondents in their reply stated that the petitioner remained absent from duties for a period of about two years, therefore, as prescribed under Rule 86 of the Rajasthan Service Rules, 1951 a penalty of removal is imposed upon the petitioner after holding an inquiry in accordance with Rule 16 of the Rules of 1958. The punishment imposed is neither excessive nor disproportionate to the delinquency for which the petitioner is found guilty.

Heard counsel for the parties.

During arguments counsel for the petitioner failed to point out any violation of the procedure prescribed under Rule 16 of the Rules of 1958 which has caused prejudice to the petitioner in defending himself, as such much stress is not given to the contention that the inquiry was conducted in violation of Rule 16 of the Rules of 1958.

The counsel for the petitioner vehemently urged that the penalty imposed upon the petitioner is shockingly disproportionate to the delinquency for which he is found guilty, specially in the circumstances that the petitioner was allowed to join duties in the year 1984 and thereafter no action was taken by the respondents for a period of more than six years. The counsel for the petitioner also empathetically stated that the punishment imposed is discriminatory as for the same charge number of other co-employees were awarded with lesser punishments. Some of examples are pointed out by the petitioner, details of which are given in para 27 read with Schedule-B appended with the writ petition.

It is the position admitted that the petitioner remained absent from duties from 1.5.1982 to 15.4.1984 and on 16.4.1984 he reported before the Secretary to the Government of Rajasthan, Department of Medical and Health Services. He was allowed to join duties and he was posted at Jaswantgarh under an order dated 25.4.1984. The charge sheet was served upon the petitioner in the month of August, 1990. The inquiry officer completed the inquiry and submitted inquiry report to the disciplinary authority on 27.3.1992. The petitioner was served with a notice for making comments on the report of inquiry officer in the month of May, 1992. The petitioner also submitted comments thereon on 2.6.1992 but no action was taken by the

respondents for years together. The respondents imposed a penalty of removal upon the petitioner by order impugned dated 17.11.1995.

The facts stated above clearly show that the respondents were not diligent in holding disciplinary proceedings against the petitioner and were also not prompt in taking any appropriate action even after completion of inquiry. The fact that the respondents allowed the petitioner to resume duties on 16.4.1984 and then to continue in service without serving any charge sheet upto August, 1990 dilutes the severity of the allegations levelled against the petitioner. The petitioner in fact remained in services of the respondents for a period of more than 11 years after commission of alleged misconduct that too after knowledge of the misconduct alleged. In view of it the allegations levelled against the petitioner looses its severity and, therefore, in peculiar circumstances of the case in my considered opinion the punishment of removal from service is highly disproportionate to the delinquency proved.

I also found force in the contention of the petitioner that for the allegation of wilful absence the respondents awarded lesser punishment to number of other similarly situated persons and the same is discriminatory. This Court in the case of Dr.Malchand Punia v. State of Rajasthan & Ors., SBCWP No.1829/89,

decided on 31.10.1990; and in the case of Dr.Safdar Hussain v. State of Rajasthan & Ors., SBCWP No.4490/93, decided on 2.8.2005, held that no discrimination can be made even in the matter of awarding punishment if the allegations of misconduct are identical.

In the instant case the petitioner is subjected to a punishment of removal whereas the persons named in Schedule-B were subjected to lesser punishment than to removal though the allegation of misconduct was identical. In the cases of persons named in Schedule-B the respondents imposed the punishment of stoppage of annual grade increments with cumulative effect, whereas a penalty of removal is imposed upon the petitioner. I do not find any just and valid reason for imposing the severe punishment of removal upon the petitioner as the persons similarly situated were subjected to lesser punishment.

For the reasons mentioned above I am having no doubt that the petitioner is awarded with, by the respondents, a punishment disproportionate to the delinquency and that too discriminatory. I could have remanded the matter to the disciplinary authority for considering the question of imposing a penalty upon the petitioner lesser than the penalty of removal, however, looking to the fact that the present matter is pending before this Court since 1995 and the

incident for which inquiry was made relates to the year 1982-84, I consider it appropriate to modify the punishment while exercising powers under Articles 226 and 227 of the Constitution of India instead of remanding the matter to the disciplinary authority.

Looking to all the facts and circumstances of this case I consider it appropriate to modify the order of punishment dated 17.11.1995 by substituting penalty of stoppage of three annual grade increments with cumulative effect in place of penalty of removal from service. The petitioner shall be entitled to be treated in continuous service from the date of his initial appointment and he shall also be entitled for all consequential benefits except the back wages from 17.11.1995 till today.

The writ petition is disposed of accordingly.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.